

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

NATIONSTAR MORTGAGE LLC,

Plaintiff,

-against-

5:16-CV-0279 (LEK/ATB)

JEANETTE MOODY, individually and as
surviving joint tenant with rights of
survivorship of Mildred Moody,

Defendant.

DECISION AND ORDER

I. INTRODUCTION

Currently before the Court is plaintiff Nationstar Mortgage LLC's second motion for default judgment. Dkt. No. 15 ("Motion"). For the following reasons, Nationstar's Motion is denied, but may be renewed by filing a letter request with the Court after correcting a deficiency with its notice of pendency in the Onondaga County Clerk's office.

II. BACKGROUND

The facts of this case are described in the Court's previous opinion in this matter. Nationstar Mortg. LLC v. Moody, No. 16-CV-279, 2016 WL 4203514, at *1 (N.D.N.Y. Aug. 9, 2016) (Kahn, J.). In that decision, Nationstar's first motion for default judgment was denied for failure to comply with this district's local rules. Id. at *1–2. Specifically, the affidavit accompanying Nationstar's motion failed to affirm that Moody (the defendant) was not an infant, incompetent, or in military service. Id. at *2 & n.1.

In its current Motion, Nationstar has addressed this deficiency. Dkt. No. 16 ("Attorney Affidavit") ¶ 10. But the notice of pendency Nationstar filed with the Onondaga County Clerk

does not appear to have included a copy of the complaint in this action. Dkt. No. 5 (“Notice of Pendency”); Dkt. No. 16-2 (“Exhibit B”) at 27–29.

III. DISCUSSION

Under New York law, before a court may enter judgment directing the sale of real property, the plaintiff must file a notice of pendency with the clerk of the county in which the property is located. N.Y. Real Prop. Acts. Law § 1331. A copy of the complaint in the foreclosure action must be filed with the notice of pendency. N.Y. C.P.L.R. 6511(a); accord, e.g., Ditech Fin. LLC v. Frantz, No. 16-CV-146, 2017 WL 1184206, at *3–4 (N.D.N.Y. Mar. 29, 2017); Ditech Fin. LLC v. Sterly, No. 15-CV-1455, 2016 WL 7429439, at *4 (N.D.N.Y. Dec. 23, 2016); OneWest Bank, N.A. v. Conklin, 310 F.R.D. 40, 44 (N.D.N.Y. 2015).¹

As mentioned above, the Notice of Pendency does not appear to include a copy of the complaint. Accordingly, Nationstar’s motion for default judgment must be denied. See, e.g., Sterly, 2016 WL 7429439, at *4–5 (denying a motion for default judgment filed by Nationstar’s counsel for failure to show that the complaint was included with the notice of pendency). Since it appears that Nationstar’s new motion otherwise meets the requirements for default judgment,² the Court will permit Nationstar to renew its request for default judgment through a letter request either affirming that a copy of the complaint was in fact filed with the original notice of pendency, or including a new notice of pendency filed with the county clerk. See Sterly, 2016

¹ The complaint does not need to be included if “it has already been filed in that county.” N.Y. C.P.L.R. 6511(a).

² While the Motion itself seems to be sufficient, for the reasons specified in U.S. Bank Trust, N.A. v. Monroe, No. 15-CV-1480, 2017 WL 923326, at *1 n.1 (N.D.N.Y. Mar. 8, 2017) (Kahn, J.), Nationstar’s request for attorney’s fees cannot be permitted, Dkt. No. 16-5, ¶ 4.

WL 7429439, at *4 (“[S]uccessive notices of pendency are permitted to be filed when prosecuting a foreclosure action to final judgment.”); Campbell v. Smith, 768 N.Y.S.2d 182, 183 (App. Div. 2003) (same). This letter request must be filed within thirty (30) days, or this case will be dismissed without further order of the Court.

IV. CONCLUSION

Accordingly, it is hereby:

ORDERED, that Nationstar’s Motion (Dkt. No. 15) is **DENIED with leave to renew**; and it is further

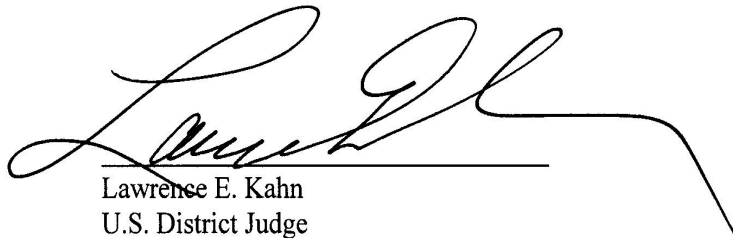
ORDERED, that Nationstar may renew its motion for default judgment by filing, within **thirty (30) days** of the filing of this Decision and Order, a letter request that includes either an affirmation that a copy of the complaint was filed with the original notice of pendency or that includes a new notice of pendency filed with the county clerk; and it is further

ORDERED, that if Nationstar fails to file such a letter request within **thirty (30) days**, its complaint shall be dismissed and the Clerk of the Court shall close this action without further order of the Court; and it is further

ORDERED, that the Clerk shall serve a copy of this Decision and Order on all parties in accordance with the Local Rules.

IT IS SO ORDERED.

DATED: April 13, 2017
Albany, New York



Lawrence E. Kahn
U.S. District Judge